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GREAT LAKES, LAND USE, AND
ENVIRONMENT COMMITTEE

May 30, 2006

Corbin Davis
Clerk, Michigan Supreme Court
Michigan Hall of Justice
925 W. Ottawa
P.O. Box 30052
Lansing, MI 48909

Re: Proposed Administrative Order 2003-47

Dear Mr. Davis:

I am writing to address some of the arguments made against Proposed Administrative Order 2003-47 at the Court's May 24, 2006 hearing. The purpose of this correspondence is neither to support nor oppose the proposed order; instead, I seek to dispel some of the arguments made by the various opponents of the proposed order concerning the constitutional separation of powers.

Const 1963, art III, § 2, states that "The powers of government are divided into three branches; legislative, executive and judicial. No person exercising powers of one branch shall exercise powers properly belonging to another branch except as expressly provided in this constitution." I do not consider either Alternative A or Alternative B of the Court's proposed order to constitute an intrusion into the legislature's constitutional sphere of power. Recently, the House Tort Reform Committee passed legislation (HB 5851) that addressed damage caps in asbestos cases and medical criteria for bringing asbestos-related claims. We did not address—indeed, we did not consider whether we could address—questions regarding asbestos case consolidation or the inactive asbestos docket. Both of these latter issues constitute matters of judicial efficiency and administration, and, according to Const 1963, Art VI, are the concern of the judicial branch.

In conclusion, let me reiterate that I do not express an opinion regarding the adoption of Proposed Administrative Order 2003-47. However, I must strongly disagree with those who assert that the Court, by adopting the proposed order, will be interfering with the legislature's constitutional power. Both Alternative A and Alternative B of the proposed order concern judicial efficiency, and as such are primarily judicial, rather than legislative, in nature.

Sincerely,

Kevin A. Elsenheimer
State Representative
105th House District

